

Koeltl, J

JUDGE KOELTL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CENGAGE LEARNING, INC., BEDFORD,
FREEMAN & WORTH PUBLISHING GROUP,
LLC d/b/a MACMILLAN LEARNING, ELSEVIER
INC., MCGRAW HILL LLC, and PEARSON
EDUCATION, INC.,

Plaintiffs,

v.

DOES 1 - 48 d/b/a ALLEBOOKSVITAL.COM,
ANLIFESTYLES.COM, BLOGSHIRTS68.CLUB,
BOOKDESKSHOP.COM, BOSSIVA.COM,
DUPLANACA.COM, DURANBOOKS.COM,
EBESTREADER.COM,
EBOOK.ENGASTORE.COM,
EBOOKCLOUDS.COM, EBOOKLISTTOP.COM,
EBOOKSMARTLY.COM, EBOOKSNOW.ORG,
EBOOKSPACES.COM, EBOOKSPOT.SHOP,
EBOOKSROCKET.COM, ECOEBOOK.COM,
EDUPLIFY.COM, EPERFECTEDU.COM,
ESTORESELECT.COM, EVOMALLS.COM,
FRIDAYCOLLECTION.MYSHOPIFY.COM,
GOGOODDISCOUNT.COM, HLSHIRT.COM,
HUNTERBUUK.COM,
INTELLEGANTMARKETS.COM,
IZIEBOOK.COM, JENLION.CO, JENWIND.CO,
JOLOSTORE.COM, KA-
SHOPP.MYSHOPIFY.COM,
KIWIBOOKCLUB.MYSHOPIFY.COM,
MAGIC.ENGASTORE.COM, NOAMALLS.COM,
OSCARMALLS.COM,
PAYVERSITYSTORE.MYSHOPIFY.COM,
PRICEAIRSTORE.COM, RITZYISH.US,
SHELLAS.COM, SMART-EDU-
STORE.MYSHOPIFY.COM,
SOURCE4STUDENT.COM, STINGMALL.COM,
STUDENTNCLASS.MYSHOPIFY.COM,
STUDYHALLPRESS.COM, TEESPOPS.COM,
TESTBANKCLICK.COM,
TOPBOOKS.ZIPLOMA.COM, AND
VALERIEHOPTOP.COM

Defendants.

20 CV 00769

Civil Action No.

Under Seal

**[PROPOSED] 1) TEMPORARY
RESTRAINING ORDER; 2)
ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE; 3) EXPEDITED
DISCOVERY ORDER; AND 4)
ALTERNATE SERVICE ORDER
("EX PARTE ORDER")**

EX PARTE ORDER

Plaintiffs Cengage Learning, Inc., Bedford, Freeman & Worth Publishing Group, LLC d/b/a Macmillan Learning, Elsevier Inc., McGraw Hill LLC, and Pearson Education, Inc. (collectively, "Plaintiffs") have moved *ex parte*, pursuant to, *inter alia*, Federal Rules of Civil Procedure 64 and 65, the Copyright Act (17 U.S.C. § 502(a)), and N.Y. C.P.L.R. §§ 6201 *et al.* against Defendants Does 1 – 48 (collectively, "Defendants"), doing business as, respectively, allebooksvital.com, anlifestyles.com, blogshirts68.club, bookdeskshop.com, bossiva.com, duplanaca.com, duranbooks.com, ebestreader.com, ebook.engastore.com, ebookclouds.com, ebooklisttop.com, ebooksmartly.com, ebooksnow.org, ebookspaces.com, ebookspot.shop, ebooksrocket.com, ecoebook.com, eduplify.com, eperfectedu.com, estoreselect.com, evomalls.com, fridaycollection.myshopify.com, gogoooddiscount.com, hlshirt.com, hunterbuuk.com, intellegantmarkets.com, iziebook.com, jenlion.co, jenwind.co, jolostore.com, ka-shopp.myshopify.com, kiwibookclub.myshopify.com, magic.engastore.com, noamalls.com, oscarmalls.com, payversitystore.myshopify.com, priceairstore.com, ritzyish.us, sheellas.com, smart-edu-store.myshopify.com, source4student.com, stingmall.com, studentnclass.myshopify.com, studyhallpress.com, teespops.com, testbankclick.com, topbooks.ziploma.com, and valeriehoptop.com (the "Infringing Sites"), for 1) a temporary restraining order, 2) order to show cause why a preliminary injunction should not issue, 3) order authorizing expedited discovery, and 4) order authorizing alternate service by electronic mail (the "Application"). Plaintiffs so move the Court on the basis that Defendants are reproducing and distributing unauthorized electronic copies of Plaintiffs' copyrighted textbooks, as set forth in Plaintiffs' Complaint.

The Court, having reviewed the Complaint, Memorandum of Law, supporting

Declarations, and all other papers submitted therewith, makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS AND CONCLUSIONS OF LAW

1. Plaintiffs are likely to succeed in showing that Defendants have infringed and are continuing to infringe Plaintiffs' federally registered copyrights by reproducing and distributing unauthorized electronic copies of Plaintiffs' copyrighted textbooks ("Infringing eBooks"), including via the Infringing Sites.

2. The reproduction and/or distribution of the Infringing eBooks will result in immediate and irreparable injury to Plaintiffs if the requested relief is not granted.

3. The balance of potential harm to Defendants by being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the harm to Plaintiffs, their businesses, and the value associated with Plaintiffs' copyrights if a temporary restraining order is not issued. Defendants are not harmed by being prevented from continuing to profit from illegal and infringing activities.

4. Public interest favors issuance of a temporary restraining order in order to protect Plaintiffs' interests in and to their respective copyrights, and to protect the public from being deceived and defrauded by Defendants' infringing copies of Plaintiffs' textbooks.

5. If Defendants are given notice of the Application and this *Ex Parte* Order prior to the date(s) by which Plaintiffs must serve Defendants, as set forth below, Defendants are likely to secrete, conceal, transfer, or otherwise dispose of the proceeds from and evidence of their sales of Infringing eBooks, thus preventing Plaintiffs from obtaining the information necessary to effectuate the asset freeze, determining the full extent of Defendants' illegal sales, and recovering the proceeds from the illegal sales.

6. Without the requested expedited discovery, Plaintiffs will not be able to determine the true identities and locations of the Defendants, as well as obtain the information necessary to effectuate the asset freeze and determine the full extent of Defendants' illegal sales.

7. Service on Defendants by electronic mail to the addresses used by Defendants to conduct their business on the Infringing Sites is reasonably calculated to provide actual notice to Defendants of Plaintiffs' claims, this Application, and the *Ex Parte* Order.

ORDER TO SHOW CAUSE

Based on the foregoing, it is HEREBY ORDERED that Defendants shall appear on 2/11 2020, at 4⁰⁰ a.m./p.m. in Courtroom 14A of the United States District Court for the Southern District of New York at 500 Pearl Street / 40 Centre Street, New York, New York, to show cause why an order, pursuant to, *inter alia*, Federal Rules of Civil Procedure 64 and 65, the Copyright Act (17 U.S.C. § 502(a)), N.Y. C.P.L.R. §§ 6201 *et al.*, and the Court's inherent equitable authority, should not be entered, pending resolution of this case or further order of this Court, granting Plaintiffs a preliminary injunction enjoining Defendants, their respective officers, agents, employees, and attorneys, and all those in active concert or participation with any of them who receive actual notice of the order, in a manner substantially similar to the relief provided herein.

IT IS FURTHER ORDERED that Defendants' answering papers shall be filed and served upon Plaintiffs' counsel, by email to steve@oandzlaw.com, on or before 2/6/20, 2020, and Plaintiffs' reply papers, if any, shall be filed and served on Defendants on or before 2/10, 2020.

TEMPORARY RESTRAINING ORDER

IT IS HEREBY ORDERED, in accordance with Federal Rules of Civil Procedure 64 and

65, the Copyright Act (17 U.S.C. § 502(a)), N.Y. C.P.L.R. §§ 6201 *et al.*, and the Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, and no prior application having been granted, that:

1. Defendants, their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with any of them who receive actual notice of this Temporary Restraining Order are enjoined from:

- a) Directly or indirectly infringing any copyrighted work that is owned or exclusively controlled by any of Plaintiffs ("Plaintiffs' Textbooks"), i.e., any copyrighted work published under any of the imprints identified on Exhibit A to the Complaint (attached hereto as Appendix A);
- b) Copying, reproducing, manufacturing, downloading, uploading, transmitting, distributing, selling, offering to sell, advertising, marketing, promoting, or otherwise exploiting any of Plaintiffs' Textbooks without Plaintiffs' express written authorization;
- c) Enabling, facilitating, permitting, assisting, soliciting, encouraging, or inducing the copying, reproduction, manufacture, download, upload, transmission, distribution, sale, offering for sale, advertisement, marketing, promotion, or other exploitation of any of Plaintiffs' Textbooks without Plaintiffs' express written authorization;
- d) Using, hosting, operating, maintaining, creating, or registering any computer server, website, domain name, domain name server, cloud storage, e-commerce platform, online advertising service, social media platform, or payment processing service to support the Infringing Sites or

otherwise enable, facilitate, permit, assist, solicit, encourage, or induce the infringement of Plaintiffs' Textbooks, as set forth in subparagraphs (a) through (c) above.

- e) Transferring ownership or control of the websites, domain names, or accounts associated with Defendants' Infringing Sites.

2. Defendants, their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with any of them who receive actual notice of this Temporary Restraining Order must immediately locate all accounts holding or receiving money or other assets owned, connected to, associated with, held by, or transferred in connection with Defendants' Infringing Sites or Defendants' sale of Plaintiffs' Textbooks ("Defendants' Accounts") and immediately cease transferring, withdrawing, or otherwise disposing of any money or other assets in Defendants' Accounts or allowing such money or other assets in Defendants' Accounts to be transferred, withdrawn, or otherwise disposed of. Defendants' Accounts include but are not limited to: (i) Defendants' accounts in connection with PayPal Inc., Stripe, Inc., Square, Shopify, and other providers of payment processing services to the Infringing Sites; and (ii) Defendants' accounts with banks, financial institutions, or payment processing companies not covered by the preceding 2(i) ("Financial Institutions") that have received money or other assets from Defendants' Accounts or otherwise received sales proceeds from Defendants or the Infringing Sites.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall remain in effect for fourteen (14) days unless extended by order of the Court.

IT IS FURTHER ORDERED that Plaintiffs shall post security in the amount of \$ ⁰⁰10,000, by corporate surety bond, cash, credit card, or a certified or attorney's check.

by 1/31/20

IT IS FURTHER ORDERED that upon two (2) business days' written notice to the Court

and Plaintiffs' counsel, any Defendant or restrained third party may appear and move for the dissolution or modification of the provisions of this Temporary Restraining Order upon an appropriate evidentiary showing.

IT IS FURTHER ORDERED that restrained third parties and/or third parties from whom Plaintiffs seek expedited discovery as set forth in the Expedited Discovery Order below shall not provide Defendants with notice of this *Ex Parte* Order until Plaintiffs have notified such third parties that Defendants have been served with the *Ex Parte* Order. Within two (2) days of serving Defendants with the *Ex Parte* Order, as set forth in paragraph 3 of the Alternative Service Order below, Plaintiffs shall notify third parties with whom they have provided notice of this *Ex Parte* Order and/or sought expedited discovery hereunder that service upon Defendants has been effected, at which time any such third parties may provide notice to Defendants.

EXPEDITED DISCOVERY ORDER

Sufficient cause having been shown, IT IS HEREBY ORDERED that:

1. Within two (2) days of receiving actual notice of this *Ex Parte* Order, Defendants, their officers, agents, servants, employees, and attorneys, and any individual or entity providing services to Defendants' Infringing Sites or to Defendants in connection with those activities referred to in paragraph 1 of the Temporary Restraining Order, shall provide to Plaintiffs' counsel, via email to steve@oandzlaw.com, written disclosure of the following information, regardless of whether such information physically resides in the United States or abroad:

- a) All names, physical addresses, email addresses, and Internet Protocol ("IP") addresses associated with Defendants or the Infringing Sites;
- b) Any other websites or domain names associated with or related to Defendants or the Infringing Sites, along with all names, physical addresses,

email addresses, and IP addresses associated with such websites and/or domain names;

- c) Identification of Defendants' Accounts with Financial Institutions, including complete account numbers, and all names, physical addresses, email addresses, and IP addresses associated with Defendants' Accounts with Financial Institutions; and
- d) The current balance held in Defendants' Accounts and Defendants' Accounts with Financial Institutions.

2. Plaintiffs may immediately issue expedited discovery requests to Defendants and/or seek via subpoena from relevant third parties, who shall provide within five (5) days of service of the requests or subpoena the following information, regardless of whether such information physically resides in the United States or abroad:

- a) Defendants' sales of Plaintiffs' Textbooks from January 1, 2018 to the present, including the relevant title, ISBN, number of copies sold, price per copy, date sold, and purchaser's city and state;
- b) Account statements and/or similar detail for Defendants' Accounts with Financial Institutions, including complete account numbers, current account balances, IP addresses used to access Defendants' Accounts, and the account holders' or signatories' true names, physical addresses, and email addresses;
- c) With respect to a Financial Institution, information concerning its connection to the United States, including but not limited to information concerning U.S. dollar wire transfers to and from other countries as well as

properties owned, correspondent accounts, acquiring banks, and settlement accounts in the United States and/or used by Defendants; and

- d) Any information specified in paragraph 1 of this Expedited Discovery Order that has not already been provided to Plaintiffs.

ALTERNATE SERVICE ORDER

Sufficient cause having been shown, IT IS HEREBY ORDERED that:

1. Pursuant to Federal Rules of Civil Procedure 4(f)(3) and 5 and N.Y. C.P.L.R. § 308, service of process and service of subsequent documents may be made on and shall be deemed effective as to Defendants by email to Defendants' email addresses associated with the Infringing Sites as identified in Appendix B hereto ("Defendants' Email Addresses").

2. Plaintiffs may carry out alternate service of process by email as ordered herein by providing Defendants with a link to a File Transfer Protocol ("FTP") or other type of secure file-transmittal site to access .pdf copies of: 1) this *Ex Parte* Order; 2) the Summons and Complaint; and 3) all papers filed in support of Plaintiffs' Application.

3. Plaintiffs shall provide notice of this *Ex Parte* Order and Plaintiffs' papers in support of the Application to Defendants' Email Addresses within five (5) days of disclosure of all discovery sought concerning Defendants' Accounts with Financial Institutions as provided in the Temporary Restraining Order and/or Expedited Discovery Order, but in no event later than ten (10) days from the date of this *Ex Parte* Order. Plaintiffs shall file proof of such service on the case docket within two (2) days of making such service.

It is SO ORDERED this 29 day of January, 2020, at 3⁵⁷ a.m./p.m.



UNITED STATES DISTRICT JUDGE

dm

For the reasons explained above,
there is good cause that all papers in this
action be filed under seal until the
defendants have been served. Therefore,
all papers in this case are to be filed
under seal until further order of the Court.

SO ORDERED.



1/29/20. U.S. D.C.

APPENDIX A

Cengage Learning	Macmillan Learning
Brooks Cole Cengage Cengage Learning Course Technology Delmar Gale Heinle Milady National Geographic Learning South-Western Educational Publishing Wadsworth	Bedford, Freeman & Worth High School Publishers Bedford/St. Martin's BFW BFW High School Publishers Freeman Macmillan Education Macmillan Learning W.H. Freeman & Company Worth Worth Publishers
Elsevier	
Academic Cell Academic Press Amirsys Butterworth Heinemann Digital Press Elsevier Gulf Professional Publishing Hanley & Belfus Knovel Made Simple Books	Medicine Publishing Morgan Kaufmann Publishers Mosby Newnes North Holland Saunders Urban & Fischer William Andrew Woodhead Publishing
McGraw Hill	Pearson
Irwin Lange McGraw-Hill McGraw-Hill Education McGraw-Hill Higher Education McGraw-Hill Professional McGraw-Hill Ryerson McGraw-Hill/Appleton & Lange McGraw-Hill/Contemporary McGraw-Hill/Dushkin McGraw-Hill/Irwin ^[L] _[SEP] NTC/Contemporary ^[L] _[SEP] Osborne Schaum's	Addison Wesley Adobe Press Allyn & Bacon Benjamin Cummings Brady Cisco Press Financial Times Press/FT Press IBM Press Longman New Riders Press Peachpit Press Pearson Pearson Education Que Publishing Sams Publishing

APPENDIX B

Infringing Site	E-mail(s) on Infringing Site and in Purchase Evidence
allebooksvital.com	allebooksvital@gmail.com
anlifestyle.com	vandoanbql@gmail.com
blogshirts68.club	admin@dahomedecor.com blogshirts68@gmail.com
bookdeskshop.com	haniff_haslam@outlook.com trakeembintalha@gmail.com
bookpanthers.com	support@bookpanthers.com
bossiva.com	support@ebookzoom.com
duplanaca.com	support@duplanaca.com
duranbooks.com	support@duranbook.com
ebestreader.com	bestreader.contact@gmail.com muhdzhan1986@hotmail.com
ebook.engastore.com	xuantruong21nd@gmail.com ebook@engastore.com
ebookclouds.com	ebookclouds.com@gmail.com
ebooklisttop.com	support@ebooklisttop.com
ebooksmartly.com	rafanbinwaseefw@gmail.com
ebooksnow.org	admin@ebooksnow.org

ebookspaces.com	ebookspaces.com@gmail.com
ebookspot.shop	ebookspot2019@gmail.com
ebooksrocket.com	info@ebooksrocket.com
ecoebook.com	livingmistore1987@outlook.com Support@ecoebook.com
eduplify.com	muhdzainbinmalik@hotmail.com
eperfectedu.com	mohdsabilsadaqat@outlook.my
estoreselect.com	harrisq07@gmail.com
evomalls.com	support@evomalls.com
fridaycollection.myshopify.com	ahmadanwaribinzakaria@outlook.my
gogooddiscount.com	support@gogooddiscount.com
hlshirt.com	admin@dahomedecor.com
hunterbuuk.com	jaliliman@outlook.my hunterbook.main@gmail.com
intellegantmarkets.com	sabek20020@gmail.com bassil2811968@gmail.com banoramaalabour@gmail.com
iziebook.com	support@pizado.com
jenlion.co	distore@shopmail.me

jenwind.co	support@pizado.com
jolostore.com	support@jolostore.com kaolastore20192020@outlook.com vht14012015@outlook.com
ka-shopp.myshopify.com	nizarsaidin72@outlook.com azmeerkh@gmail.com
kiwibookclub.myshopify.com	kiwibookclub21@gmail.com
magic.engastore.com	wddqyz49@gmail.com magic@engastore.com
noamalls.com	contact@noamalls.com
oscar malls.com	contact@oscar malls.com
payiversitystore.myshopify.com	info.payiversitystore@gmail.com
priceairstore.com	support@priceairstore.com
ritzzyish.us	support@leofifty.com
sheellas.com	support@librastyles.com
smart-edu-store.myshopify.com	mohammadahlan87@outlook.com smartedu.contact@gmail.com
source4student.com	husainrasib_92@outlook.com qabeelbinmuzammilmuzammil@gmail.com
stingmall.com	support@stingmall.com

studentnclass.myshopify.com	books4kimi@gmail.com Info.StudentNClass@gmail.com
studyhallpress.com	info@studyhallpress.com
teespops.com	support@teespops.com
testbankklick.com	sales@testbankklick.com
topbooks.ziploma.com	topbooks@ziploma.com luutoan091086@gmail.com
valeriehoptop.com	info@valeriehoptop.com jayscollectioncontact@gmail.com